



State of Wisconsin









LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 04/20/2009

(Per: CMH)

Compile Draft – Appendix C **... Part 01 of 01**

- | | |
|--|--|
| A  The <u>2009</u> drafting file for
LRB-2519 | E  The <u>2009</u> drafting file for
LRB-2680 |
| B  The <u>2009</u> drafting file for
LRB-2551 | F  The <u>2009</u> drafting file for
LRB-2686 |
| C  The <u>2009</u> drafting file for
LRB-2566 | G  The <u>2009</u> drafting file for
LRB-2687 |
| D  The <u>2009</u> drafting file for
LRB-2522 | H  The <u>2009</u> drafting file for
LRB-2556 (as an insert) |

2009 LRB-2566 has been copied/added to the drafting file for

2009 LRB-2697

2009 DRAFTING REQUEST**Bill**Received: **04/06/2009**Received By: **pgrant**Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**By/Representing: **Skwarczek**This file may be shown to any legislator: **NO**Drafter: **pgrant**

May Contact:

Addl. Drafters:

Subject: **Education - CESAs**
Education - school boards
Education - state superintendent
Higher Education - tech. college
Higher Education - UW System

Extra Copies: **TKK**
MDK
GMM

Submit via email: **YES**

Requester's email:

Carbon copy (CC:) to:

Pre Topic:

DOA:.....Skwarczek -

Topic:

Authorize disclosure of pupil records; create longitudinal student database

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	pgrant 04/09/2009	nnatzke 04/13/2009		_____			S&L
/1	jkuesel 04/16/2009 pgrant 04/16/2009	nnatzke 04/16/2009	jfrantze 04/13/2009	_____ _____ _____	cduerst 04/13/2009		

LRB-2566

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Page 2

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/2	pgrant 04/17/2009	nnatzke 04/17/2009	rschluet 04/16/2009		mbarman 04/16/2009		
/3			jfrantze 04/17/2009		cduerst 04/17/2009		

FE Sent For:

<END>

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Subject: **Education - CESAs**
Education - school boards
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MDK
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/?	pgrant 04/09/2009	nnatzke 04/13/2009					S&L
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LRB-2566

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Page 2

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

/2

rschluet

04/16/2009

mbarman

04/16/2009

FE Sent For:

<END>

2009 DRAFTING REQUEST

Bill

Received: **04/06/2009**

Received By: **pgrant**

Wanted: **As time permits**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Skwarczek**

This file may be shown to any legislator: **NO**

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May Contact:

Addl. Drafters:

Subject: **Education - CESAs
Education - school boards
Education - state superintendent
Higher Education - tech. college
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Extra Copies: **TKK
MDK
GMM**

Submit via email: **YES**

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DOA:.....Skwarczek -

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/?	pgrant	/	<i>[Signature]</i> 4/13	<i>[Signature]</i> 4/13 ph/np			

FE Sent For:

<END>

Grant, Peter

From: Skwarczek, Marta A - DOA [Marta.Skwarczek@Wisconsin.gov]
Sent: Friday, April 03, 2009 1:47 PM
To: Grant, Peter
Cc: Hanaman, Cathlene; Hanle, Bob - DOA
Subject: draft to align state statutes with requirements of federal American Recovery and Reinvestment Act

Peter,

In order to access federal moneys under the ARRA State Fiscal Stabilization Fund, the state needs to make an assurance that it will establish and use a pre-K through college data system to track student progress. From our conversations with DPI, it appears that current statutes prohibit DPI from sharing pre K-12 information with postsecondary institutions.

A thorough description of the issues and the changes that need to be made are described in the paragraphs that follow. Please feel free to contact me if you have any questions or would like further information. Thanks.

The following are the changes to Wisconsin law relating to the creation of a statewide database in which DPI, educational institutions (including pK-12, post secondary and higher educational institutions) and the Wisconsin Covenant can share student information with each other.

Under Wisconsin law (Wis. Stat. §118.125(2)(g)), DPI can receive student information from both pK-12 and postsecondary institutions. Wisconsin law expressly authorizes school boards to share student information with the DPI superintendent (as a "public officer") and to DPI. Although state law does not expressly authorize postsecondary institutions to disclose their student information to DPI, in the absence of a state prohibition, postsecondary institutions can probably share postsecondary student information with the superintendent and/or DPI. However, because state law requires DPI to keep student information that it receives from school boards confidential, DPI cannot share pK-12 information with postsecondary institutions without removing or amending the confidentiality requirement in Wis. Stat. §118.125(2)(g)(2).

Under the federal Family Educational Rights and Privacy Act of 1974 (FERPA) (codified at 20 U.S.C. §1232g), pK-12 institutions can share student information with state educational authorities, such as DPI, without parental consent because DPI has the authority to audit or evaluate pK-12 programs. It is unclear whether FERPA allows postsecondary institutions to share student information without consent with DPI or schools, since neither DPI nor schools have the authority to audit or evaluate secondary institution programs. FERPA does not prevent DPI from disclosing student information to other entities, including pK-12 and postsecondary institutions, so long as the recipient is authorized under federal, state or local law to audit or evaluate (or enforce compliance to) the providing institution's programs. There is concern that DPI could not disclose longitudinal pK-16 student information to schools and postsecondary institutions because pK-12 schools and DPI are not authorized under state law to evaluate postsecondary programs and because postsecondary institutions are not authorized to evaluate pK-12 programs. FERPA will not prevent state educational authorities and educational institutions from sharing student data so long as there is some local, state, or federal legal authority, including executive orders or administrative regulations that provide the receiving parties authority to evaluate the sending party's programs.

Based on the above, we would propose the following changes:

1. Authorize educational agencies and institutions (including local school districts, postsecondary institutions, higher education authorities) and the Wisconsin Covenant, under the oversight and leadership of the DPI superintendent, to jointly evaluate educational programs, including pk-12 and postsecondary education programs.
2. Authorize educational agencies and institutions (including local school districts, postsecondary institutions, higher education authorities), DPI and the Wisconsin Covenant, to share personally identifiable student information with each other under the oversight of DPI in order to evaluate and align pK-12 and postsecondary programs.
3. Amend the confidentiality provision in Wis. Stat. §118.125(g)(3) to authorize DPI to share student information with educational agencies and institutions, including local school districts, postsecondary institutions, higher

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education authorities, and the Wisconsin Covenant, for the purpose of creating a statewide longitudinal database to be used for evaluating and aligning education programs.

Marta Skwarczek
Executive Policy and Budget Analyst
Education, Children, and Families Team
Wisconsin Department of Administration
(608) 266-5468

Grant, Peter

From: Grant, Peter
Sent: Monday, April 06, 2009 11:24 AM
To: Skwarczek, Marta A - DOA
Subject: RE: draft to align state statutes with requirements of federal American Recovery and Reinvestment Act

Marta, I'm working on an answer to your question, but in the meantime I also have a few additional questions for you. (I spent more time this morning reading the actual changes you requested.)

The third item is very confusing to me. Does "student information" mean information about pK-12 pupils only? Does authorizing DPI to "share" that information mean that DPI may disclose the info to others, but not that others may disclose the info to DPI? Who will be creating this statewide longitudinal database, and who will be using it to track student progress? If DPI, why would DPI need to disclose the info to others?

Thanks.

From: Skwarczek, Marta A - DOA [mailto:Marta.Skwarczek@Wisconsin.gov]
Sent: Monday, April 06, 2009 10:09 AM
To: Grant, Peter
Subject: RE: draft to align state statutes with requirements of federal American Recovery and Reinvestment Act

Peter, do you know what the citation of federal law is to support this: 'Federal law allows DPI to disclose student info only to "state and local educational authorities." I don't think that the UW is a state educational authority; the UW is an "educational agency or institution."

Thanks- we are working to address all of your questions and concerns.

From: Grant, Peter [mailto:Peter.Grant@legis.wisconsin.gov]
Sent: Friday, April 03, 2009 3:56 PM
To: Skwarczek, Marta A - DOA
Subject: RE: draft to align state statutes with requirements of federal American Recovery and Reinvestment Act

Hi Marta. I have a few concerns and questions about the request. First the concerns:

In the description of 118.125 (2) (g) that you have provided, I think that there are a couple of misstatements. First, it states that DPI can receive student info from both pK-12 and postsecondary institutions. I don't see the authority for that in par. (g). Paragraph (g) applies only to what a school board may do. First it says a school board may provide "public officials" with certain info. Then it says that upon request by DPI, school boards may provide DPI with certain info. (By the way, note that it does not *require* a school board to provide any info.) The info must relate to an audit or evaluation of a federal or state program or be required in order to determine school board compliance with chs. 115 to 121.

Second, it states that "Although state law does not expressly authorize postsecondary institutions to disclose their student information to DPI, in the absence of a state prohibition, postsecondary institutions can probably share postsecondary student information with the superintendent and/or DPI." I'm also not aware of any state prohibition against a postsecondary institution disclosing student info with DPI, but I don't think FERPA allows it except under certain circumstances. The officials may have access to the info in connection with an audit or evaluation of a federal or state program or for the enforcement of or compliance with federal legal requirements which relate to those programs.

I think there are also misstatements in the description of FERPA. Under federal law, a pK-12 institution can share student info with state educational authorities (e.g., DPI) only *in connection with* an audit or evaluation of a federal or state program, not *because* DPI has the authority to audit or evaluate pK-12 programs.

The description goes on to say "FERPA does not prevent DPI from disclosing student information to other entities, including pK-12 and postsecondary institutions, so long as the recipient is authorized under federal, state or local law to audit or evaluate (or enforce compliance to) the providing institution's programs." I do not think this is accurate. Federal law allows DPI to disclose student info

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Grant, Peter

From: Grant, Peter
Sent: Monday, April 06, 2009 3:55 PM
To: Skwarczek, Marta A - DOA
Subject: RE: draft to align state statutes with requirements of federal American Recovery and Reinvestment Act

Well, I'm trying to make sense of the federal regulations (34 CFR 99), which define "educational agency or institution," but do not define "state and local educational authorities." I think that the terms, because they use different words, must mean different things.

In 34 CFR 99.31 (a) (3) (iv), an "educational agency or institution" may disclose personally identifiable info from a student's educational record, without consent, if the disclosure is to "state and local educational authorities." This grant of authority is subject to 34 CFR 99.35, which states that the state and local authorities "may have access to education records in connection with an audit or evaluation of Federal or State supported education programs or for the enforcement of or compliance with Federal legal requirements which relate to these programs."

So it seems to me that an authority must be the kind of entity that would ordinarily be authorized to evaluate or audit another entity's implementation of a state or federal program or enforce compliance with federal law relating to that state or federal program. To take a simple example, could a school board be considered a local educational authority under these regulations? What authority does a school board have to audit or evaluate another entity's educational program or enforce the other entity's compliance with federal law relating to that program? Admittedly, the UW is a more difficult case, but looking at the UW as a single entity (i.e., ignoring the Board of Regents authority over the various UW campuses), what authority does the UW have to audit or evaluate, or enforce compliance with federal law relating to, any other entity's educational programs? Can the UW audit or evaluate, or enforce federal law relating to, a school board's or technical college's programs?

Compare a different grant of authority to disclose without consent under the federal regulations. Under 34 CFR 99.31 (a) (2), an educational agency or institution may disclose personally identifiable info to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll. This is subject to 34 CFR 99.34, which is entitled "What conditions apply to disclosure of information to *other educational agencies or institutions*?" In other words, there are different requirements for disclosing info to other educational agencies and institutions than there are for disclosing info to state and local educational authorities.

Also, I think the term "state and local educational authorities" should be read in light of the entities it is grouped with. In 99.31 (a) (3), the term is grouped with the U.S. Comptroller General, the US Attorney General, and the Secretary of the U.S. Department of Education. These are entities that are likely to be responsible for evaluating or auditing state and federal education programs, or enforcing compliance with federal legal requirements relating to the programs.

Your proposal seems to operate on the assumption that (for example) if we authorize a school board to evaluate programs that the UW operates, the school board has become a state or local educational authority, and therefore the UW may disclose personally identifiable information from a student's education record to the school board. I'm not sure that's true. (And note that even if it is true, the information may be disclosed only *in connection with* the evaluation, and must be destroyed when no longer needed for that evaluation.)

OK, after having expressed my opinion on Friday, and after having explained it above, I decided to do some actual legal research. I should have learned by now to reverse this order, but what I found reinforces my opinion. I found a Federal Dept. of Ed. letter from August, 1999, which discusses the data sharing arrangement between the Wyoming Community College Commission (WCCC) and the seven Wyoming community colleges. (I think the arrangement is similar to the WTCS Board and the technical colleges in Wisconsin.) The letter acknowledges that there is no definition of "state or local educational authorities" in FERPA or anywhere else in federal law or regulation. It states, "This Office [Family Compliance Office] has interpreted the phrase to include any entity or person that is responsible under State or local authority for the administration of educational programs and functions, including the supervision, direction, coordination or control of educational activities at the postsecondary, secondary, or elementary level."

The letter then reviews WCCC's responsibilities relating to the community colleges. It finds that "WCCC is responsible for overall administration of the program of State support for the community college system; promulgating and adopting rules that will ensure the coordinated operation and maintenance of the State's community college system, including basic audit requirements; reviewing, approving, disapproving, and terminating academic and vocational-technical programs; and establishing an effective management system for the community college system." Based on this description of WCCC's powers and duties, the department found that WCCC is a "state educational authority" under FERPA.

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So, in answer to your question, I believe the UW Board of Regents is a state educational authority with respect to the educational institutions within the UW System. But if one reviews the statutory powers and duties of the Board of Regents, you'll find that it doesn't have the same relationship with DPI or with the 426 school districts in Wisconsin that it has with institutions within the UW System. Therefore, I believe that it's not a state educational authority under FERPA with respect to DPI or the school districts.

Peter

From: Skwarczek, Marta A - DOA [mailto:Marta.Skwarczek@Wisconsin.gov]
Sent: Monday, April 06, 2009 10:09 AM
To: Grant, Peter
Subject: RE: draft to align state statutes with requirements of federal American Recovery and Reinvestment Act

Peter, do you know what the citation of federal law is to support this: 'Federal law allows DPI to disclose student info only to "state and local educational authorities." I don't think that the UW is a state educational authority; the UW is an "educational agency or institution."

Thanks- we are working to address all of your questions and concerns.

From: Grant, Peter [mailto:Peter.Grant@legis.wisconsin.gov]
Sent: Friday, April 03, 2009 3:56 PM
To: Skwarczek, Marta A - DOA
Subject: RE: draft to align state statutes with requirements of federal American Recovery and Reinvestment Act

Hi Marta. I have a few concerns and questions about the request. First the concerns:

In the description of 118.125 (2) (g) that you have provided, I think that there are a couple of misstatements. First, it states that DPI can receive student info from both pK-12 and postsecondary institutions. I don't see the authority for that in par. (g). Paragraph (g) applies only to what a school board may do. First it says a school board may provide "public officials" with certain info. Then it says that upon request by DPI, school boards may provide DPI with certain info. (By the way, note that it does not *require* a school board to provide any info.) The info must relate to an audit or evaluation of a federal or state program or be required in order to determine school board compliance with chs. 115 to 121.

Second, it states that "Although state law does not expressly authorize postsecondary institutions to disclose their student information to DPI, in the absence of a state prohibition, postsecondary institutions can probably share postsecondary student information with the superintendent and/or DPI." I'm also not aware of any state prohibition against a postsecondary institution disclosing student info with DPI, but I don't think FERPA allows it except under certain circumstances. The officials may have access to the info in connection with an audit or evaluation of a federal or state program or for the enforcement of or compliance with federal legal requirements which relate to those programs.

I think there are also misstatements in the description of FERPA. Under federal law, a pK-12 institution can share student info with state educational authorities (e.g., DPI) only *in connection with* an audit or evaluation of a federal or state program, not *because* DPI has the authority to audit or evaluate pK-12 programs.

The description goes on to say "FERPA does not prevent DPI from disclosing student information to other entities, including pK-12 and postsecondary institutions, so long as the recipient is authorized under federal, state or local law to audit or evaluate (or enforce compliance to) the providing institution's programs." I do not think this is accurate. Federal law allows DPI to disclose student info only to "state and local educational authorities." I don't think that the UW is a state educational authority; the UW is an "educational agency or institution."

Here are my initial questions:

In items 1 to 3, I'm not sure who you mean when you refer to "educational agencies and institutions." Clearly you want to include school districts, but it's not clear what else you mean. When you say "including postsecondary institutions," do you mean all 4-year colleges in the state, including private colleges? Do you mean technical colleges? What does "higher education authorities" mean? Does it include HEAB? When you refer to the Wisconsin Covenant, do you mean the office of the Wisconsin Covenant Scholars Program in DOA or do you mean HEAB, which administers the program?

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In the description of state law, the last sentence states that DPI cannot share pK-12 info with postsecondary institutions without removing or amending the confidentiality requirement in 118.125 (2) (g) 2. Do you want me to remove the last sentence of (g) 2.? Note that even with the removal of that confidentiality requirement, FERPA still would require that the info "be protected in a manner that does not permit personal identification of individuals by anyone except the officials" who received the info.

Peter

From: Skwarczek, Marta A - DOA [mailto:Marta.Skwarczek@Wisconsin.gov]

Sent: Friday, April 03, 2009 1:47 PM

To: Grant, Peter

Cc: Hanaman, Cathlene; Hanle, Bob - DOA

Subject: draft to align state statutes with requirements of federal American Recovery and Reinvestment Act

Peter,

In order to access federal moneys under the ARRA State Fiscal Stabilization Fund, the state needs to make an assurance that it will establish and use a pre-K through college data system to track student progress. From our conversations with DPI, it appears that current statutes prohibit DPI from sharing pre K-12 information with postsecondary institutions.

A thorough description of the issues and the changes that need to be made are described in the paragraphs that follow. Please feel free to contact me if you have any questions or would like further information. Thanks.

The following are the changes to Wisconsin law relating to the creation of a statewide database in which DPI, educational institutions (including pK-12, post secondary and higher educational institutions) and the Wisconsin Covenant can share student information with each other.

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1. Authorize educational agencies and institutions (including local school districts, postsecondary institutions, higher education authorities) and the Wisconsin Covenant, under the oversight and leadership of the DPI superintendent, to jointly evaluate educational programs, including pk-12 and postsecondary education programs.
2. Authorize educational agencies and institutions (including local school districts, postsecondary institutions,

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higher education authorities), DPI and the Wisconsin Covenant, to share personally identifiable student information with each other under the oversight of DPI in order to evaluate and align pK-12 and postsecondary programs.

3. Amend the confidentiality provision in Wis. Stat. §118.125(g)(3) to authorize DPI to share student information with educational agencies and institutions, including local school districts, postsecondary institutions, higher education authorities, and the Wisconsin Covenant, for the purpose of creating a statewide longitudinal database to be used for evaluating and aligning education programs.

Marta Skwarczek
Executive Policy and Budget Analyst
Education, Children, and Families Team
Wisconsin Department of Administration
(608) 266-5468

Grant, Peter

From: Skwarczek, Marta A - DOA [Marta.Skwarczek@Wisconsin.gov]
Sent: Tuesday, April 07, 2009 10:34 AM
To: Grant, Peter
Subject: RE: draft to align state statutes with requirements of federal American Recovery and Reinvestment Act

Peter,

The answers to your questions and concerns can be found below in green. It turns out that we are all in agreement that under FERPA, the UW is not a state educational authority with respect to DPI or school districts. That is why, in order to allow for a pK-16 data sharing system, postsecondary institutions need to be given authority under state law to evaluate pK-12 educational programs, as it is not explicit in federal law.

Please let me know if anything is still unclear.

Thanks!

From: Grant, Peter [mailto:Peter.Grant@legis.wisconsin.gov]
Sent: Friday, April 03, 2009 3:56 PM
To: Skwarczek, Marta A - DOA
Subject: RE: draft to align state statutes with requirements of federal American Recovery and Reinvestment Act

Hi Marta. I have a few concerns and questions about the request. First the concerns:

In the description of 118.125 (2) (g) that you have provided, I think that there are a couple of misstatements. First, it states that DPI can receive student info from both pK-12 and postsecondary institutions. I don't see the authority for that in par. (g). Paragraph (g) applies only to what a school board may do. First it says a school board may provide "public officials" with certain info. Then it says that upon request by DPI, school boards may provide DPI with certain info. (By the way, note that it does not *require* a school board to provide any info.) The info must relate to an audit or evaluation of a federal or state program or be required in order to determine school board compliance with chs. 115 to 121.

-No, while (g)(1) says "may", (g)(2) says that the board "shall" provide DPI with certain information.

Second, it states that "Although state law does not expressly authorize postsecondary institutions to disclose their student information to DPI, in the absence of a state prohibition, postsecondary institutions can probably share postsecondary student information with the superintendent and/or DPI." I'm also not aware of any state prohibition against a postsecondary institution disclosing student info with DPI, but I don't think FERPA allows it except under certain circumstances. The officials may have access to the info in connection with an audit or evaluation of a federal or state program or for the enforcement of or compliance with federal legal requirements which relate to those programs.

The statement that DPI can receive information from k-12 and postsecondary is supported in that (g) explicitly permits it. ?

I think there are also misstatements in the description of FERPA. Under federal law, a pK-12 institution can share student info with state educational authorities (e.g., DPI) only *in connection with* an audit or evaluation of a federal or state program, not *because* DPI has the authority to audit or evaluate pK-12 programs.

New regs. and guidance indicates that FERPA regs. will turn on authority, not whether the information is collected in connection with an actual audit. ?

The description goes on to say "FERPA does not prevent DPI from disclosing student information to other entities, including pK-12 and postsecondary institutions, so long as the recipient is authorized under federal, state or local law to audit or evaluate (or enforce compliance to) the providing institution's programs." I do not think this is accurate. Federal law allows DPI to disclose student info only to "state and local educational authorities." I don't think that the UW is a state educational authority; the UW is an "educational agency or institution."

If UW is authorized to evaluate the pk-12 programs (under state law), it can do so as agency, institution and perhaps even an authority.

Here are my initial questions:

In items 1 to 3, I'm not sure who you mean when you refer to "educational agencies and institutions." Clearly you want to include

04/07/2009

school districts, but it's not clear what else you mean. When you say "including postsecondary institutions," do you mean all 4-year colleges in the state, including private colleges? Do you mean technical colleges? What does "higher education authorities" mean? Does it include HEAB? When you refer to the Wisconsin Covenant, do you mean the office of the Wisconsin Covenant Scholars Program in DOA or do you mean HEAB, which administers the program?

For educational agencies and institutions we want the language to stay general so that it covers all educational agencies, institutions, and authorities in the state and also the office of the Wisconsin Covenant Scholars Program in DOA (the Office may have to be specifically listed). From DPI's perspective, 'education agencies, institutions, and authorities' would encompass school districts, CESAs, HEAB, the UW System, and the technical college system, but not private colleges.

In the description of state law, the last sentence states that DPI cannot share pK-12 info with postsecondary institutions without removing or amending the confidentiality requirement in 118.125 (2) (g) 2. Do you want me to remove the last sentence of (g) 2.? Note that even with the removal of that confidentiality requirement, FERPA still would require that the info "be protected in a manner that does not permit personal identification of individuals by anyone except the officials" who received the info.

Yes, please remove the confidentiality requirement in 118.125(2)(g)2.

The third item is very confusing to me. Does "student information" mean information about pK-12 pupils only? Does authorizing DPI to "share" that information mean that DPI may disclose the info to others, but not that others may disclose the info to DPI? Who will be creating this statewide longitudinal database, and who will be using it to track student progress? If DPI, why would DPI need to disclose the info to others?

Please add a definitional provision that defines 'student information' to include pupil records as defined under 118.125 and 'education records' as defined under FERPA, 20 USC 1232g(a)(4). Placement might be in 118.125(g)(2) for pupil records and sharing, with a cross reference to 115 (placing evaluation authority in the DPI duties). DPI will be creating the statewide longitudinal database and it needs the ability to disclose the information to others for evaluation purposes so that other educational agencies (school districts, etc.) can have access to the data to (for example) receive feedback on how their students perform in college and discover 'what works.'

Peter

From: Skwarczek, Marta A - DOA [mailto:Marta.Skwarczek@Wisconsin.gov]

Sent: Friday, April 03, 2009 1:47 PM

To: Grant, Peter

Cc: Hanaman, Cathlene; Hanle, Bob - DOA

Subject: draft to align state statutes with requirements of federal American Recovery and Reinvestment Act

Peter,

In order to access federal moneys under the ARRA State Fiscal Stabilization Fund, the state needs to make an assurance that it will establish and use a pre-K through college data system to track student progress. From our conversations with DPI, it appears that current statutes prohibit DPI from sharing pre K-12 information with postsecondary institutions.

A thorough description of the issues and the changes that need to be made are described in the paragraphs that follow. Please feel free to contact me if you have any questions or would like further information. Thanks.

The following are the changes to Wisconsin law relating to the creation of a statewide database in which DPI, educational institutions (including pK-12, post secondary and higher educational institutions) and the Wisconsin Covenant can share student information with each other.

Under Wisconsin law (Wis. Stat. §118.125(2)(g)), DPI can receive student information from both pK-12 and postsecondary institutions. Wisconsin law expressly authorizes school boards to share student information with the DPI superintendent (as a "public officer") and to DPI. Although state law does not expressly authorize postsecondary institutions to disclose their student information to DPI, in the absence of a state prohibition, postsecondary institutions can probably share postsecondary student information with the superintendent and/or DPI. However, because state law requires DPI to keep student information that it receives from school boards confidential, DPI cannot share pK-12 information with postsecondary institutions without removing or amending the confidentiality requirement in Wis. Stat. §118.125(2)(g)(2).

Under the federal Family Educational Rights and Privacy Act of 1974 (FERPA) (codified at 20 U.S.C. §1232g), pK-12 institutions can share student information with state educational authorities, such as DPI, without parental consent because DPI has the authority to audit or evaluate pK-12 programs. It is unclear whether FERPA allows

04/07/2009

Grant, Peter

From: Skwarczek, Marta A - DOA [Marta.Skwarczek@Wisconsin.gov]
Sent: Tuesday, April 07, 2009 11:37 AM
To: Grant, Peter
Subject: RE: draft to align state statutes with requirements of federal American Recovery and Reinvestment Act

Peter, this is a link to the new regs. with a couple sections highlighted below.

<http://edocket.access.gpo.gov/2008/pdf/E8-28864.pdf>

Department of Education's comments and explanation of new regulations in the federal registry (73 FR 74806) include the following explanation of the new regulations:

SEAs [state education authorities], higher education authorities, and educational agencies and institutions, including local school districts and postsecondary institutions, [may] share education records in personally identifiable form with one another, provided that Federal, State, or local law authorizes the recipient to conduct the audit, evaluation, or compliance or enforcement activity in question. Accordingly, data sharing arrangements among State and local educational authorities and educational agencies and institutions generally must meet these requirements to be permissible under FERPA.

. . . [States] may need to review and modify the supervisory and oversight responsibilities of various State and local educational authorities to ensure that there is valid legal authority for LEAs, postsecondary institutions, SEAs, and higher education authorities to disclose or redisclose personally identifiable information from education records to one another under § 99.35(a) before information is released.

. . . It is not our intention in § 99.35(a)(2) to require educational agencies and institutions and other parties to identify specific statutory authority before they disclose or redisclose education records for audit or evaluation purposes but to ensure that some local, State, or Federal legal authority exists for the audit or evaluation, including for example an Executive Order or administrative regulation.

From: Grant, Peter [mailto:Peter.Grant@legis.wisconsin.gov]
Sent: Tuesday, April 07, 2009 10:49 AM
To: Skwarczek, Marta A - DOA
Subject: RE: draft to align state statutes with requirements of federal American Recovery and Reinvestment Act

Marta, I think you misunderstood my email. My main point (and I apologize for not making it more clear) is that simply authorizing an educational agency to evaluate another educational agency's programs does not make the evaluating educational agency a state educational authority. Look at what the federal dept of education looked at to determine whether the Wyoming Community College Commission was a state educational agency with respect to the Wyoming community colleges.

Of course I'll draft the proposal. My point is that I am not sure that it will accomplish your intent.

Could you please send me copies of the new regs and guidance about FERPA that you refer to in your third answer.

Peter

From: Skwarczek, Marta A - DOA [mailto:Marta.Skwarczek@Wisconsin.gov]
Sent: Tuesday, April 07, 2009 10:34 AM
To: Grant, Peter
Subject: RE: draft to align state statutes with requirements of federal American Recovery and Reinvestment Act

Peter,

The answers to your questions and concerns can be found below **in green**. It turns out that we are all in agreement that under 04/09/2009

Grant, Peter

From: Grant, Peter
Sent: Tuesday, April 07, 2009 2:14 PM
To: Skwarczek, Marta A - DOA
Subject: RE: new regs

Marta, I've read the pertinent portions of the Federal Register that you sent me, including both the new regs and the accompanying explanations. The language of 99.35 (a) is unchanged. I still believe that a general statement authorizing an educational agency to evaluate another educational agency's programs does not make the first educational agency a state educational authority.

In a previous email you responded to one of my questions this way:

New regs. and guidance indicates that FERPA regs. will turn on authority, not whether the information is collected in connection with an actual audit.

I'm curious about the authority for this. I don't see it in the material you sent me. Here's a paragraph from those materials:

We agree that current regulations were unclear about the ability of States to establish and operate data sharing systems with educational agencies and institutions, which is why we amended § 99.35(b). As explained in the NPRM (73 FR 15587), §§ 99.35(a) (2) and 99.35(b) allow SEAs, higher education authorities, and educational agencies and institutions, including local school districts and postsecondary institutions, to share education records in personally identifiable form with one another, **provided that Federal, State, or local law authorizes the recipient to conduct the audit, evaluation, or compliance or enforcement activity in question.** Accordingly, data sharing arrangements among State and local educational authorities and educational agencies and institutions generally must meet these requirements to be permissible under FERPA. (Data sharing with educational researchers is discussed below under Educational research.)

I guess I read "**provided that Federal, State, or local law authorizes the recipient to conduct the audit, evaluation, or compliance or enforcement activity in question**" quite differently. I think that it is a restatement of current law. Obviously, I have not read all 50 or so pages of commentary, but what I have seen does not say that the decision will turn on authority, ~~and not~~ on whether the info is collected in connection with an actual audit. In fact, the reg itself is unchanged; it still says "*in connection with an audit or evaluation.*"

Peter

but

From: Skwarczek, Marta A - DOA [mailto:Marta.Skwarczek@Wisconsin.gov]
Sent: Tuesday, April 07, 2009 12:01 PM
To: Grant, Peter
Subject: new regs

This is a shorter version of the new regs.

04/09/2009

Date (time)
needed _____

LRB - 2566 / 1

BILL

PG : nwn : _____

Use the appropriate components and routines developed for bills.

AN ACT ... [generate catalog] *to repeal* ... ; *to renumber* ... ; *to consolidate and renumber* ... ; *to renumber and amend* ... ; *to consolidate, renumber and amend* ... ; *to amend* ... ; *to repeal and recreate* ... ; and *to create* ... of the statutes; relating to: *evaluations of educational programs* ...
and the establishment of a statewide database of ...
students ①

SA ✓
X-ref ✓

[NOTE: See section 4.02 (2) (br), Drafting Manual, for specific order of standard phrases.]

Analysis by the Legislative Reference Bureau

If titles are needed in the analysis, in the component bar:

For the main heading, execute: **create** → **anal**: → **title**: → **head**

For the subheading, execute: **create** → **anal**: → **title**: → **sub**

For the sub-subheading, execute: **create** → **anal**: → **title**: → **sub-sub**

For the analysis text, in the component bar:

For the text paragraph, execute: **create** → **anal**: → **text**

(attached)

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION #.

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

ANALYSIS

⑬

EDUCATION

This bill authorizes an educational agency (defined to include a school district, cooperative educational service agency, the Department of Public Instruction (DPI), the Higher Educational Aids Board, the Board of Regents of the University of Wisconsin System, the technical college system board, a board, technical college district board, and the Office of the Wisconsin Covenant Scholars Program) [✓] individually or ^{or more} individually or in conjunction with one or more educational agencies to conduct an evaluation of any state or federal educational program operated by another educational agency. [✓] DPI must supervise the

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

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LRB

evaluation. ✓

¶ The bill also provides that

~~that of any evaluation described above,~~

each educational agency engaged in an
evaluation described above may disclose to
any other educational agency engaged in
the evaluation, and to DPI

personally identifiable information of any
pupil enrolled in the educational agency,
without the consent of the pupil or the parent

or guardian ✓ of the pupil if he or she
is an adult.

¶ Finally, the bill directs DPI to
establish a statewide longitudinal database
to track student progress from pre-kindergarten

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

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LRB

through postsecondary schools and authorizes
educational agencies to disclose to
DEI pupil information without the consent
of the pupil or ^{the} pupil's parent or guardian ^{and maintaining}
for the purpose of establishing ^{the}
database. ✓

FE - SL ✓

SEC. ^{XX} CR; 115.49

115.49 Program evaluations; statewide database of students. ^{no #}

⑧

(1) ~~(a)~~ "Department" means the department of public instruction. In this section ↕

(a) ~~(2)~~ "Educational agency" means a school district, a cooperative educational service agency, the department, the higher educational aids board, the board of regents of the University of Wisconsin System, the technical college system board, a technical college district board, and the office of the Wisconsin Covenant Scholars Program in the department of administration. ✓

(b) ~~(2)~~ "Education records" has the meaning given in 20 USC 1232g (a) (4). ✓

(c) ~~(2)~~ "Pupil records" has the meaning given in s. 118.125 (1) (d). ✓

⑧ (a)

(2) An educational agency may, individually or jointly with one or more educational agencies, conduct an evaluation of any state or federal educational program operated by another educational agency. The department shall supervise any evaluation conducted under the authority of this subsection. ~~subsection~~ paragraph ✓

(b)

(3) As part of any evaluation conducted under ~~sub. (2)~~ par. (a) ✓, each educational agency engaged in the evaluation may disclose to any other educational agency engaged in the evaluation, and to the department, personally identifiable information of any pupil enrolled in the educational agency that is contained in the pupil's education records or pupil records, without the consent of the pupil's parent or guardian, or of the pupil if he or she is an adult. ✓

⑧

(3) ~~(2)~~ The department shall establish a statewide longitudinal database to track student progress from ~~pre-kindergarten~~ ^{prekindergarten} through postsecondary school. An educational agency may disclose to the department personally identifiable information of any pupil enrolled in the educational agency that is contained in the pupil's education records or pupil records, without the consent of the pupil's parent or guardian, or of the pupil if he or she is an adult, for the purpose of establishing the database. ^{and maintaining} ✓

Section #. ~~118~~^X.125 (2) (intro.) of the statutes is amended to read:

118.125 (2) CONFIDENTIALITY. (intro.) All pupil records maintained by a public school shall be confidential, except as provided in pars. (a) to (p) ~~and~~^{and} sub. (2m). The school board shall adopt regulations to maintain the confidentiality of such records. ✓

and s. 115.49 ✓

History: 1973 c. 254; 1977 c. 418; 1979 c. 205; 1981 c. 20, 273; 1983 a. 189; 1985 a. 218; 1987 a. 27, 70, 206, 285, 337, 355; 1987 a. 399 s. 491r; 1987 a. 403 ss. 123, 124, 256; 1989 a. 31, 168; 1989 a. 201 s. 36; 1989 a. 336; 1991 a. 39, 189; 1993 a. 27, 172, 334, 377, 385, 399, 450, 491; 1995 a. 27 ss. 3939, 3940, 9126 (19), 9130 (4), 9145 (1); 1995 a. 77, 173, 225, 352; 1997 a. 3, 27, 205, 237, 239; 1999 a. 9, 149; 2003 a. 82, 292; 2005 a. 344, 434; 2005 a. 443 s. 265; 2007 a. 20 ss. 2712, 9121 (6) (a).

Section #. 118.125 (2) (g) 2. of the statutes is amended to read:

118.125 (2) (g) 2. Upon request by the department, the school board shall provide the department with any information contained in a pupil record that relates to an audit or evaluation of a federal or state-supported program or that is required to determine compliance with requirements under chs. 115 to 121. ~~The department shall keep confidential all pupil records provided to the department by a school board.~~

History: 1973 c. 254; 1977 c. 418; 1979 c. 205; 1981 c. 20, 273; 1983 a. 189; 1985 a. 218; 1987 a. 27, 70, 206, 285, 337, 355; 1987 a. 399 s. 491r; 1987 a. 403 ss. 123, 124, 256; 1989 a. 31, 168; 1989 a. 201 s. 36; 1989 a. 336; 1991 a. 39, 189; 1993 a. 27, 172, 334, 377, 385, 399, 450, 491; 1995 a. 27 ss. 3939, 3940, 9126 (19), 9130 (4), 9145 (1); 1995 a. 77, 173, 225, 352; 1997 a. 3, 27, 205, 237, 239; 1999 a. 9, 149; 2003 a. 82, 292; 2005 a. 344, 434; 2005 a. 443 s. 265; 2007 a. 20 ss. 2712, 9121 (6) (a).

End

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

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Legal (608-266-3561)

LRB

-2566/Pldn

PG:nwn:

Marta -

Marta -

DN
Date

As I mentioned in my email, I'm not sure whether the disclosure of ^{ostensibly} ~~parent~~ information allowed under this bill is actually allowed under federal law.

Note that the ^{disclosure} disclosure of information is only of pupils "enrolled in the educational agency." That works for school districts, ~~and~~ technical college districts, the UW System, and a technical college district board. I think it may work for the WTCB board and it may work for DAT, although only for pupils enrolled in the two state schools. However, if there are no pupils enrolled

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

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LRB

in HEAB or ⁱⁿ the office of the
Wisconsin Covenant Scholars Program are
the only pupils that arguably are
enrolled in DPI are ^{the} pupils attending the
two state residential schools.✓

PG

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2566/1dn
PG:nwn:jf

April 13, 2009

Marta-

As I mentioned in my emails, I'm not sure whether the disclosure of information ostensibly allowed under this bill is actually allowed under federal law.

Note that the disclosure of information is only of pupils "enrolled in the educational agency." That works for school districts, technical college districts, the UW System, and a technical college district board. I think it may work for the WTCS board. However, there are no pupils enrolled in HEAB or in the Office of the Wisconsin Covenant Scholars Program, and the only pupils that arguably are enrolled in DPI are the pupils attending the two state residential schools.

Peter R. Grant
Managing Attorney
Phone: (608) 267-3362
E-mail: peter.grant@legis.wisconsin.gov

Grant, Peter

From: Skwarczek, Marta A - DOA [Marta.Skwarczek@Wisconsin.gov]
Sent: Wednesday, April 15, 2009 5:52 PM
To: Frantzen, Jean; Grant, Peter
Cc: Hanle, Bob - DOA; Hanaman, Cathlene; Beadles, Kathleen - DOA
Subject: RE: LRB Draft: 09-2566/1 Authorize disclosure of pupil records; create longitudinal student database

Please change this draft to only include Section 3, the elimination of 'The department shall keep confidential all pupil records provided to the department by a school board.' under s.118.125(2)(g)2 and remove the rest of the changes.

Thanks.

From: Frantzen, Jean [mailto:Jean.Frantzen@legis.wisconsin.gov]
Sent: Monday, April 13, 2009 11:35 AM
To: Skwarczek, Marta A - DOA
Cc: Hanle, Bob - DOA; Hanaman, Cathlene - LEGIS; Beadles, Kathleen - DOA
Subject: LRB Draft: 09-2566/1 Authorize disclosure of pupil records; create longitudinal student database

Following is the PDF version of draft 09-2566/1.

04/16/2009



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-2566/1 2
PG:nwn:jf

50th
Now

DOA:.....Skwarczek - Authorize disclosure of pupil records; create longitudinal student database

FOR 2009-11 BUDGET — NOT READY FOR INTRODUCTION

→ regen.

1 **AN ACT to amend** 118.125 (2) (intro.) and 118.125 (2) (g) 2.; and **to create** 115.49

2 of the statutes; **relating to:** ~~evaluations of educational programs and the~~

3 ~~establishment of a statewide database of students.~~

the confidentiality of
pupil records provided to
the Department of Public
Instruction

Analysis by the Legislative Reference Bureau

EDUCATION

This bill authorizes an educational agency (defined to include a school district, cooperative educational service agency, the Department of Public Instruction (DPI), the Higher Educational Aids Board, the University of Wisconsin System, the technical college system board, a technical college district board, and the Office of the Wisconsin Covenant Scholars Program), individually or in conjunction with one or more educational agencies, to conduct an evaluation of any state or federal educational program operated by another educational agency. DPI must supervise the evaluation.

The bill also provides that each educational agency engaged in an evaluation described above may disclose to any other educational agency engaged in the evaluation, and to DPI, personally identifiable information of any pupil enrolled in the educational agency, without the consent of the pupil or the pupil's parent or guardian.

Finally, the bill directs DPI to establish a statewide longitudinal database to track student progress from prekindergarten through postsecondary school, and

authorizes educational agencies to disclose to DPI pupil information, without the consent of the pupil or the pupil's parent or guardian, for the purpose of establishing and maintaining the database.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

A →

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 115.49 of the statutes is created to read:

115.49 Program evaluations; statewide database of students. (1) In this section:

(a) "Educational agency" means a school district, a cooperative educational service agency, the department, the higher educational aids board, the board of regents of the University of Wisconsin System, the technical college system board, a technical college district board, and the office of the Wisconsin Covenant Scholars Program in the department of administration.

(b) "Education records" has the meaning given in 20 USC 1232g (a) (4).

(c) "Pupil records" has the meaning given in s. 118.125 (1) (d).

(2) (a) An educational agency may, individually or jointly with one or more educational agencies, conduct an evaluation of any state or federal educational program operated by another educational agency. The department shall supervise any evaluation conducted under the authority of this paragraph.

(b) As part of any evaluation conducted under par. (a), each educational agency engaged in the evaluation may disclose to any other educational agency engaged in the evaluation, and to the department, personally identifiable information of any pupil enrolled in the educational agency that is contained in the pupil's education

1 records or pupil records, without the consent of the pupil's parent or guardian, or of
2 the pupil if he or she is an adult.

3 (3) The department shall establish and maintain a statewide longitudinal
4 database to track student progress from prekindergarten through postsecondary
5 school. An educational agency may disclose to the department personally
6 identifiable information of any pupil enrolled in the educational agency that is
7 contained in the pupil's education records or pupil records, without the consent of the
8 pupil's parent or guardian, or of the pupil if he or she is an adult, for the purpose of
9 establishing and maintaining the database.

10 SECTION 2. 118.125 (2) (intro.) of the statutes is amended to read:

11 118.125 (2) CONFIDENTIALITY. (intro.) All pupil records maintained by a public
12 school shall be confidential, except as provided in pars. (a) to (p) and, sub. (2m), and
13 s. 115.49. The school board shall adopt regulations to maintain the confidentiality
14 of such records.

15 SECTION 3. 118.125 (2) (g) 2. of the statutes is amended to read:

16 118.125 (2) (g) 2. Upon request by the department, the school board shall
17 provide the department with any information contained in a pupil record that relates
18 to an audit or evaluation of a federal or state-supported program or that is required
19 to determine compliance with requirements under chs. 115 to 121. The department
20 shall keep confidential all pupil records provided to the department by a school
21 board.

22 (END)

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

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LRB

(A)

¶ With certain exceptions, ^{current} law requires that all pupil records maintained by a public school be kept confidential. ✓
 One exception ^{requires} a school board ~~to~~ ^{upon} request by the Department of Public Instruction (DPI) to provide DPI with any information contained in a pupil ^{record} that relates to an ^{audit} or evaluation of a federal or state-supported program or that is required to determine compliance with ^{state} laws governing public schools. ✓
 Current law directs DPI to ^{keep} confidential all pupil records provided to DPI by a school board. ✓

¶ This bill eliminates the requirement that DPI ^{keep} confidential pupil records received from a school board.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-2566/2

PG:nwn:rs

3

DOA:.....Skwarczek - Authorize disclosure of pupil records; create longitudinal student database

FOR 2009-11 BUDGET — NOT READY FOR INTRODUCTION

1 AN ACT *to amend* 118.125 (2) (g) 2. of the statutes; **relating to:** the
2 confidentiality of pupil records provided to the Department of Public
3 Instruction.

Analysis by the Legislative Reference Bureau

EDUCATION

With certain exceptions, current law requires that all pupil records maintained by a public school be kept confidential. One exception requires a school board, upon request by the Department of Public Instruction (DPI), to provide DPI with any information contained in a pupil record that relates to an audit or evaluation of a federal or state-supported program or that is required to determine compliance with state laws governing public schools. Current law directs DPI to keep confidential all pupil records provided to DPI by a school board.

This bill eliminates the requirement that DPI keep confidential pupil records received from a school board.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

INSERTA

STATE OF WISCONSIN - LEGISLATIVE REFERENCE BUREAU

LRB

Research (608-266-0341)

Library (608-266-7040)

Legal (608-266-3561)

LRB

~~(no #)~~ ^{insert A} Under ^{current} federal regulations ^{however} (DP)
may make further disclosures of
personally identifiable information
from a pupil's ^{records only} records on behalf
of the educational ^{agency} agency or
institution that disclosed the information
to DP, and only if the ^{disclosure} disclosure
falls into one or more of the existing
exceptions to the confidentiality
requirement.



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-2566/3
PG:nwn:jf

DOA:.....Skwarczek - Authorize disclosure of pupil records; create
longitudinal student database

FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

- 1 **AN ACT** *to amend* 118.125 (2) (g) 2. of the statutes; **relating to:** the
2 confidentiality of pupil records provided to the Department of Public
3 Instruction.

Analysis by the Legislative Reference Bureau

EDUCATION

With certain exceptions, current law requires that all pupil records maintained by a public school be kept confidential. One exception requires a school board, upon request by the Department of Public Instruction (DPI), to provide DPI with any information contained in a pupil record that relates to an audit or evaluation of a federal or state-supported program or that is required to determine compliance with state laws governing public schools. Current law directs DPI to keep confidential all pupil records provided to DPI by a school board.

This bill eliminates the requirement that DPI keep confidential pupil records received from a school board. Under federal regulations, however, DPI may make further disclosures of personally identifiable information from a pupil's records only on behalf of the educational agency or institution that disclosed the information to

DPI, and only if the disclosure falls into one or more of the existing exceptions to the confidentiality requirement.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 118.125 (2) (g) 2. of the statutes is amended to read:

2 118.125 (2) (g) 2. Upon request by the department, the school board shall

3 provide the department with any information contained in a pupil record that relates

4 to an audit or evaluation of a federal or state-supported program or that is required

5 to determine compliance with requirements under chs. 115 to 121. ~~The department~~

6 ~~shall keep confidential all pupil records provided to the department by a school~~

7 ~~board.~~

(END)